

EXCERPTS FROM
"1992 - AN INTRODUCTORY GUIDE"
BY CLIFFORD CHANCE

2025865358

FOREWORD

There can be few businesses today that are not aware of "1992" – the year designated by the European Community for the completion of the "Single European Market".

1988 has seen the publication by the European Commission of the great majority of the principal components of the 1992 programme. We can now see virtually the full picture of the 279 piece jigsaw of proposals which will shape the structure of European business over the next decade.

There may be many however who have not examined in detail individual pieces of the jigsaw or begun to assess the opportunities and the threats which the 1992 programme will generate. That is the purpose of this publication. It has been written jointly by our EC lawyers in Brussels and London and lawyers who practice in the different areas covered.

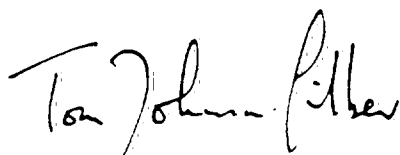
It is designed to provide an overview of:

- the 1992 programme in its economic context
- the new laws involved
- the impact on different business sectors

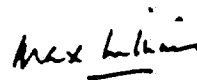
and describe the broad implications for EC companies and EFTA and Non-European companies.

Through our network of international offices, we are currently working with many organisations in a wide range of industry sectors in defining and assessing the impact of the 1992 programme on their businesses.

If you would like to explore further any of the issues raised in this guide or the more specific impact of the 1992 programme on your business operations in the European Community, the contact partners listed opposite will be pleased to assist.



Tom Johnson-Gilbert
Joint Senior Partner



Sir Max Williams
Joint Senior Partner

November 1988

Cover maps courtesy of the Commission of the European Communities.

2025865359

CHAPTER 1

1. INTRODUCTION

The objective of the European Community is to create one market comprising 323 million people in which Community industry can compete on equal terms.

The internal market will be a self-contained market in which goods can circulate freely under conditions of undistorted competition and throughout which individuals and companies, regardless of where they are based within the Community, may carry on their business upon equal terms with their competitors. This is to be achieved by eliminating all artificial barriers to trade between the individual markets of the Member States. It should be as easy to trade between the UK and Italy as between Frankfurt and Hamburg; there should be no greater barriers between Italy and France than there are between Provence and Brittany.

When the European Community was established in 1957 many different economic barriers existed between the six original Member States which hindered the attainment of a single internal market. These barriers included customs duties, quotas on the import and export of each other's goods, immigration controls on the movement of citizens, monetary controls on the flow of capital between Member States and restrictive rules on the establishment of companies. The Treaty of Rome contained fundamental provisions aimed at eradicating such barriers.

A Community Customs Union was to be established. All customs duties and quantitative restrictions and all charges and other measures having an equivalent effect on imports and exports between Member States were to be removed. In addition, Member States would create a Common Customs Tariff whereby they would charge the same level of tariffs on all goods imported from non-Member States. Competition would be further encouraged by the implementation of comprehensive anti-trust rules. Controls on the movement of capital and payments were to be removed whilst freedom of movement was to be ensured for both individuals and companies, unhindered by national rules on such matters as immigration, qualifications or the right to set up in business.

The creation of an internal market was to be achieved by a gradual process. Transitional periods were laid down in the Treaty within which the market was to be established. Whilst the Treaty provided the general framework, secondary legislation was to be introduced by the EC Council to work out the details. Rapid progress was made in the early years. Customs duties between the original six were entirely removed by 1968. At the same time the Community succeeded in agreeing and creating its Common Customs Tariff. However, the recession of the 1970s, two oil crises and the difficulties caused by the accession of six new Member States have all reduced progress. The Council became dogged by political in-fighting and Member States began to introduce protectionist measures. By the 1980s most of the transitional periods had passed but it was clear that the attainment of the internal market was still a long way off.

2025865360

Faced with such slow progress the Member States decided to accelerate the establishment of the internal market. The Single European Act was signed in 1986 and came into force in 1987. Essentially, the Act provides for reforms in the law-making process of the Community designed to speed up decision making whilst laying down the framework for the introduction of certain fundamental Community policies. The most important of these is the Community's commitment to the creation of the single internal market by 1992:-

"an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured".

Thus, some thirty years into its existence, the European Community has designated 31st December 1992 as the deadline for the achievement of the internal market.

2025865361

CHAPTER 2

2. WHAT ARE THE BARRIERS TO THE ACHIEVEMENT OF THE SINGLE MARKET?

The programme for the completion of the internal market was set out in the Commission's White Paper of June 1985. This presents a detailed analysis of the barriers which need to be abolished and the positive action which needs to be taken before the single market can be achieved. It details some 300 measures, since reduced to 279, which must be implemented and the timetable within which this is to be accomplished.

The White Paper's analysis of the steps to be taken is set out under three convenient headings:

- removal of physical barriers;
- removal of technical barriers;
- removal of fiscal barriers.

2.1 REMOVAL OF PHYSICAL BARRIERS

2.1.1 *What physical barriers?*

The Commission sees it as essential to remove the customs and immigration barriers situated at national frontiers where goods and individuals are systematically stopped and checked. Politically, it is important for individuals to feel part of an integrated Community within which they can move freely from one country to another without scrutiny. From an economic standpoint, substantial savings can be made by limiting or removing cross-frontier controls on movements of goods.

Checks are currently made on the movement of goods for the following reasons:

- to enforce national trade quotas which may exist in some sectors;
- to operate the Community system of compensation in the agricultural sector;
- to collect VAT and excise duties;
- to carry out health controls;
- to carry out transport controls;
- to collect statistics.

Checks on individuals are carried out for the following reasons:

- immigration control of passports, visas and work permits to verify the identity and status of people crossing borders;
- security control against terrorists, drug carriers and wanted criminals;
- customs control to ensure that the tax authorities of the Member State of entry collect their due tax on goods carried by individuals.

2025865362

2.1.2 *What are the proposals for removal of these barriers?*

(a) *Free movement of goods*

The Commission has put forward a number of proposals aimed at simplifying controls and formalities. Significant progress was made in export and import procedures on 1st January 1988 with the introduction of the Single Administrative Document (SAD) and the removal of transit advice and guarantee requirements. The SAD replaced a multiplicity of forms, about 70 in all, with one document.

Other measures include

- the introduction of common border posts (banalisation) where all formalities are confined to a single stopping point between each Member State. Full adoption of 'banalisation' is designed to pave the way for the removal of all systematic controls at frontiers and their replacement with occasional spot checks;
- a reduction in the number, and the eventual elimination, of national trade quotas. The Commission indicated in the White Paper that if it were to prove impossible to remove all quotas by 1992, some system would have to be devised to ensure that controls took place inside Member States and not at frontiers;
- the abolition of road transport quotas.

(b) *Free movement of individuals*

The Commission has put forward a number of proposals aimed at making checks more flexible pending the introduction of safeguards against terrorism and drug trafficking. As a second stage the Commission will make proposals to coordinate national rules on the control of drugs, the status of third country nationals, the right of asylum and status of refugees, visa policies, and extradition.

So far there has been virtually no progress on proposals put forward by the Commission. The Council has watered down the proposals and has failed to adopt even the revised measures. The only significant progress has been the setting up of a committee of senior officials from the Member States to promote and enhance cooperation between national police and judicial authorities and an ad hoc working party on immigration.

2.2 REMOVAL OF TECHNICAL BARRIERS

2.2.1 *What technical barriers?*

The targets are barriers which exist within Member States as a result of law, norms or practices which inhibit or prevent intra-Community trade in goods and services or the freedom of business to set up in other Member States. The barriers are many and various. Examples include:

Goods

- the need to meet different technical regulations or standards in different Member States;
- the duplication of testing and certification procedures in different Member States;

- the reluctance of the public authorities in certain Member States to open public procurement to nationals of other Member States.

Professions

- the restrictions on the exercise by professional people, such as lawyers and architects, of their skills in other Member States through non-recognition of their qualifications.

Services

- barriers created by the need to satisfy differing rules in each Member State, eg. in the banking and insurance sectors, and by the inability to provide services in such sectors across frontiers without setting up a branch or subsidiary in other Member States.

Capital movements

- barriers to the movement of capital between Member States, such as exchange controls.

Other

- other barriers existing within and between Member States relating to company law, intellectual property law and various forms of taxation, in particular taxation of companies and securities.

2.2.2 *What are the proposals for removal of these barriers?*

(a) *Elimination of technical barriers in relation to goods*

The Commission has adopted two methods to remove technical barriers; the **Cassis de Dijon** or “**mutual recognition**” approach and the **harmonisation** approach.

In **Cassis de Dijon** the European Court of Justice ruled that where a product is lawfully manufactured and marketed in one Member State, it should be able to be sold without restriction throughout the Community. In other words, if a product meets the legislative requirements in one Member State it is presumed to be of such a standard that it can be resold in all other Member States even if it does not precisely meet the requirements of the other states. This important judgment established the principle of **mutual recognition** of standards. The import and sale of a product from another Member State can only be refused if, in the particular circumstances of the case, it is necessary to satisfy a limited range of public interests, eg. health, safety and consumer and environmental protection.

In **Cassis de Dijon**, cassis (a liqueur) was marketed in France. German law required such liqueurs to contain a specified minimum amount of alcohol, which was higher than that contained in cassis. The European Court of Justice held that cassis could not be banned from sale in Germany because it did not contain the quantity of alcohol required by German authorities. A minimum alcohol requirement was not a **necessary** provision for the protection of public health.

The mutual recognition principle may not, however, always be sufficient. It does not deal with all cases where differing national regulations address similar public interest issues such as the protection of consumers in different ways, or where Member States adopt incompatible technical standards (as in the case of television or telecommunications). In such cases Community rules are needed to replace the varying legislative provisions of the Member States. This process, known as **harmonisation**, has been extensively used and relied upon by the Community for the past twenty-five years. The difficulty has been that the adoption of each harmonisation measure has normally required unanimity in the Council of Ministers. This has often either been impossible to achieve or taken up to fifteen years to agree.

Accordingly, the Commission has decided to reduce harmonising legislation to a minimum, ie. to harmonise only where this is essential in the interests of health, safety and consumer and environmental protection. The Single European Act ensures speedier passage of such legislation by replacing the requirement for unanimity by majority vote in most cases.

In areas where harmonisation is not absolutely necessary, the mutual recognition principle applies. Goods lawfully produced or marketed in any Member State can be sold in all other Member States.

As regards industrial standards, the Commission proposes to harmonise essential requirements and then leave it to European Standards Offices (CEN/CENELEC) to set up specific European standards. Conformity with the new European standards will entitle a product to free movement throughout the Community.

The Commission has taken steps to prevent the creation of new obstacles. A 1983 Directive obliges Member States to notify the Commission in advance of drafts of national regulations laying down technical specifications.

(b) *Elimination of technical barriers in relation to services*

The Commission recognises that the provision of services constitutes a key sector which has taken second place in Community legislative policy until now. Services represented 58.5% of the value added to the Community economy in 1985, compared with 26% for manufactured goods. The White Paper on the internal market treats goods and services equally.

Certain service sectors, such as banking, insurance and telecommunications, are heavily regulated and subject to differing rules in the various Member States. In most cases companies must meet the rules of the country in which they wish to set up business or provide services, ie. the rules of the host country. For example, a bank with its head office in one Member State wishing to provide financial services in the other Member States may have to operate under twelve different sets of rules and may be subject to twelve supervisory authorities.

2025865365

The Commission's approach to the constraints upon competition caused by such restrictions is to rely on **home country** rules and supervision. The rules applying in the state where the bank was originally based (the **home country**) would govern most of its activities in other Member States in which it provides services. **Host country** rules and control should be restricted to the minimum so as to avoid barriers. This principle will, subject to some variations, be applied to a number of sectors such as banking and insurance.

(c) *Elimination of barriers in relation to free movement of individuals*

Some barriers arise from the non-recognition of personal/professional qualifications; this may prevent or discourage individuals from working in other Member States. Action taken by the Commission in this field includes proposals on the mutual recognition of academic diplomas and on vocational training. Progress has been made in the health sector where doctors, nurses, dentists, and midwives, have all had their basic training harmonised and have thus obtained the right of practice in all Member States. There has also been progress in the mining, electricity, gas, oil and water industries.

The process of adoption of these directives has in the past been very lengthy. It took over fifteen years for architects and pharmacists. The Commission now intends to provide for harmonisation in a number of sectors of minimum requirements for qualification, experience and supervised training and, subject to that, the principle of mutual recognition will apply.

The Council reached a common position in June 1988 on the Directive on the mutual recognition of diplomas.

(d) *Opening up of public procurement*

The public procurement and supply contracts of the Member States represent a significant proportion of the Community GDP, yet only a fraction of such contracts have been awarded to companies from other Member States. The public sectors in Member States have consistently favoured national suppliers for strategic reasons (eg. defence), to support high technology, to maintain dual national suppliers and national competition, to maintain employment or protect important private sector companies. The most important industries benefiting from this protection are building and construction, transport equipment other than motor vehicles, electrical goods, capital equipment and telecommunications. These practices have continued notwithstanding longstanding Community directives.

The Commission has made a number of specific proposals:

- to tighten up controls on the procedures for tendering and award of public supply and works contracts (the public supply Directive was adopted by the Council in March 1988);
- to extend public procurement to four important areas hitherto excluded - transport, production and distribution of energy, water and telecommunications;

2025865366

- to increase transparency of the public procurement procedures;
- to establish effective means of monitoring and enforcing the operation of the proposed Directives.

2.3. REMOVAL OF FISCAL BARRIERS

2.3.1 *What fiscal barriers?*

The targets are barriers created by the existence in the Member States of different types and rates of indirect tax. Problems arise particularly from Value Added Tax (VAT) and excise duties. At the moment, indirect taxes are collected by the country where the goods are finally consumed. The exporter exports goods tax free; an importer pays VAT and excise duties in the country of importation. VAT rates vary from 0% to 38%. Excise duties range from zero to 10.50 ECU's per bottle on alcohol. As long as indirect taxes and rates differ substantially between Member States, frontier controls will be necessary to ensure the due collection of taxes. The Commission takes the view that varying rates of indirect taxation have further negative effects: they create artificial price differences between countries to the detriment of consumers and represent an obstacle to free movement of goods and limit competition.

2.3.2 *What are the proposals for removing these barriers?*

The Commission concluded that a uniform system of indirect taxes was not a prerequisite to abolishing fiscal control at frontiers and avoiding trade distortion; nevertheless partial harmonisation of indirect taxes was regarded as essential. In the USA differences in taxes and tax rates of up to 5% exist between States without significant adverse effects. Thus, the Commission takes the view that it is only necessary to "approximate" indirect taxes to ensure that differences are sufficiently small to avoid distortion of trade. The Commission favours a system allowing a margin of plus or minus 2.5%/3% either side of each target rate of tax.

Such approximation of indirect taxation will have a considerable impact in many Member States with significant economic, social and political consequences. For example, France would have to abandon its higher rate of VAT of 33%, the UK would have to abandon its zero rate on certain products (such as books and food) and Denmark would suffer a fall of 9.5% in its total tax revenues. The Commission's view remains that approximation is a "manageable budgetary problem for Member States".

The Commission has made a number of specific proposals:

(a) *Proposals relating to VAT*

- the system for collecting VAT on sales and purchase across frontiers should be the same as that for the collection of VAT on sales within Member States. VAT would be charged and collected by the supplier. VAT incurred by the recipient (other than the final consumer) would be deductible irrespective of the Member State in which it had been charged;
- a Clearing House system would be set up which would ensure that tax collected in an exporting country and deducted or claimed as a tax credit in the country of import would be credited to the latter;

2025865367

- approximation of rates: The Commission has proposed two bands, one between 14% and 20% which would cover most goods and services, and a lower rate of between 4% and 9% for necessary items such as food, energy for heating and lighting, water, pharmaceuticals, books and journals and passenger transport. There would also be a standstill provision to ensure that, pending adoption of these measures, Member States will not depart further from the proposed Community objectives.

These proposals (which must be adopted by unanimous Council decision) are strongly contested by certain Member States including the UK.

(b) *Proposals relating to excise duties*

The products covered are similar throughout the Community, namely cigarettes and other tobacco products, alcohol, and mineral oils, eg. petrol and diesel fuel. There are some exceptions, notably wine, on which no duty is levied in Italy or Greece. Excise duties on beer, wine and spirits are highest in Denmark, Ireland and the UK. Since these duties represent a high proportion of the retail price, substantial discrepancies in excise duties create substantial price differences between Member States.

Specific proposals are as follows:

- harmonisation of rates of tax on cigarettes, other tobacco products, alcohol and mineral oils;
- further proposals for less significant goods on which excise duty is levied, and the interlinking of Community bonded warehouses. This would allow excisable goods to circulate freely in the internal market without payment of duty until they are finally consumed;
- abolition of duty free concessions.

Important progress has been made both by the Economic and Social Committee and by the Parliament. The Council has initiated discussions but no agreement has been reached.

2025865368

CHAPTER 3

3. WHY IS IT NECESSARY TO COMPLETE THE INTERNAL MARKET?

There are three principal reasons for striving to complete the internal market first envisaged some thirty years ago. The first is political and the other two are economic.

3.1 POLITICAL REASON

By their adhesion to the Treaty of Rome the six original members and the six new entrants committed their countries to the achievement of an internal market in which it was intended that enterprises could operate freely in competitive conditions and upon level terms. The failure of what is potentially the largest trading bloc in the world to achieve that objective and, indeed, the growth in the number of national protectionist measures inhibiting intra-Community trade in the 1970s and the 1980s, raised fundamental questions as to the value of the Common Market. In 1984 the Member States found the renewed political will to achieve the original objective of the Treaty of Rome by 31st December 1992.

It is doubtful whether that political will would have existed but for the perception of the economic benefits which could be realised if that objective were to be attained.

3.2 ECONOMIC REASONS

By whatever criteria – rates of industrial growth, share of external trade, investment or productivity – Community industry was lagging behind that of Japan and the USA. This was most marked in the high technology sector – data processing, office automation, precision instruments, electrical goods and electronics. For example, the Community's share of external trade in manufactured goods fell by 1.4% between 1979 and 1985 as against increases of 0.7% for the USA and 5.4% for Japan, whilst in the information technology and office automation sectors the Community's share fell by 2.2% whilst that of the USA and Japan increased by 3.3% and 5.5% respectively. Investment in the Community in the period 1981 – 1987 increased by 4% compared with 30% in the USA and 31% in Japan. The highest Community productivity rate in electrical and electronic goods was 47% of that in the USA whilst that of Japan was almost two and half times the US rate.

The reasons for that state of affairs included the relatively smaller size of Community companies, the existence of twelve fragmented markets and industry's consequent inability to achieve the necessary economies of scale in research and development and production; there was a consequent unwillingness to invest.

Yet potentially the EC is the largest market, with, in 1987, a population of 323 million compared with the USA at 244 million and Japan at 122 million. It had a GDP of 3,669 billion ECUs compared with 3,869 billion ECUs for the USA and 2,058 billion ECUs for Japan.

2025865369

The attainment of the single market will enable Community industry to seek to realise the full potential of this market. The potential arises in two ways. First, reduction of costs. Secondly, the competitive dynamics which will occur with the removal of the physical, fiscal and technical barriers. The economic studies of the "Cost of Non-Europe" commissioned by the Community under the supervision of Paolo Cecchini comprise some sixteen volumes of detailed economic analysis of the substantial costs of failure to attain a genuine Common Market and the corresponding gains which stand to be realised.

3.2.1 *Reduction of costs*

The prerequisite for the creation of the internal market is the removal of all physical, technical and fiscal barriers. The relative importance of individual barriers varies by country, by industry and by size of firm. A survey of Community industrialists found that physical barriers (customs and frontier delays) and technical barriers (standards and regulations), were the most significant both by country and by size of firm. In Italy and Portugal and in the office and data equipment and in the transport equipment (other than motor vehicles) sectors public procurement was one of the most significant barriers. Capital market restrictions were a significant barrier in the office and data equipment sector as were differences in VAT rates in the motor vehicle and leather and leather goods sectors.

Physical barriers

- of greatest importance in Portugal, Greece, Belgium, Spain and Italy;
- of greatest importance in man-made fibres, mineral oil refining, leather and leather goods, textiles and rubber products;
- estimated cost of these barriers ranges from 7.9 – 8.3 billion ECUs including the internal cost to business, the cost of using outside services, such as custom clearing agents, and transport delays;
- these costs represent approximately 1.7% of total intra-Community trade or nearly 2% of average consignment value;
- are of greatest importance to smaller firms;
- estimated costs of business opportunities lost range from 1% – 3% of intra-Community trade;

Technical barriers

- of greatest importance to the motor vehicle, electrical engineering, mechanical engineering, pharmaceutical and non-metallic mineral products sectors according to the Community industrialists survey;
- of greatest impact upon the electrical engineering, mechanical engineering, pharmaceutical, food and tobacco and precision and medical equipment sectors according to the Commission's experts;
- it is impossible to evaluate the aggregate costs on a global basis but the calculations for the telecommunications, vehicle manufacturing, food, construction products, textiles, clothing and pharmaceutical sectors which represent 43% of the Community's industrial output, show gains from removal of technical barriers of the order of 3 to 4 billion ECUs.

Public procurement

- this represented between 240 and 340 billion ECUs in 1986 or between 6.8 and 9.8% of GDP of the Community;
- only 2% of public procurement contracts have been awarded to firms in other Member States;
- the reduction in prices which would follow from open public procurement is estimated on 1984 data to be approximately 4.4 billion ECUs.

Fiscal barriers

- impossible to separate from physical barriers as one of the main reasons for frontier control is the present rates and arrangements for collection of VAT and excise duties.

Total

- the Commission estimates that the potential gains from the removal of these barriers range from 89 to 110 billion ECUs.

3.2.2 Competition effects

The anticipated cost savings resulting from the removal of physical, technical and fiscal barriers are perceived by the Commission to be of less importance compared with the triggering effect which their removal is expected to achieve. The twin effect of reduction in costs and thereby prices and the ability to treat the Community as a single market is expected to create a new competitive environment as Community industry adapts its strategy to take full advantage of the opportunities thereby created.

The trigger of price reductions and ready access to markets will increase competition and enhance demand, thereby further intensifying competition. Industry is expected to take advantage of economies of scale arising from the creation of a Community-wide market and of the ability to reduce the range of products required to meet demand in this market. Economies of scale in production, research and development, distribution and advertising are perceived in total to be significant, with the successful firms attaining the requisite minimum efficient size of operation.

This new competitive environment is expected to force industry to strive for greater efficiency by adopting the best and leanest methods of management and organisation. Moreover, industry is expected to focus on key product areas and dispose of peripheral operations. In industries where either significant overcapacity exists or where the minimum critical mass for operating in the market is high, further acquisitions and restructuring are likely to occur. The ability to amortise research and development costs over significantly higher sales, product specialisation and the greater perceived rewards for innovation will act as a spur to enhance research and development both by individual firms and through cooperative arrangements which will in turn intensify competition.

The Commission estimates that the potential gains from these market integration effects are between 84 and 147 billion ECUs.

3.2.3 Macroeconomic effects

The perceived macroeconomic effects in the medium to long term depend to a significant extent on whether or not the Member States and the Community adopt appropriate economic policies in the areas of public finance, external trade and inflation designed to maximise the potential benefits. The table below shows the potential gains which may be realised both without the adoption of such policies and with their adoption:-

Gross domestic product	Increase ranging from 4.5% to 7%
Consumer prices	Reduction ranging from 6% to 4.5%
Employment	Increase ranging from 1.75 to 5 million employed
Public sector balance	Improvement ranging from 2.25% to 0.5% as a percentage of GDP
External trade balance	Ranges from an improvement of 1% of GDP to a deterioration of .25%

3.3 SUMMARY

The Cecchini Report has publicised the potential "Costs of Non-Europe" as 200 billion ECUs. Its actual forecast ranges from 173 billion ECUs to 257 billion ECUs with 215 billion ECUs as the average.

Slightly under 50% of the gains derive from the reduction in costs. The principal contributor to the gains is the realisation of the potential arising from Community industry adapting to the new competitive environment in a positive, competitive and successful manner.

These gains will be gains which stand to be realised in a five to ten year period.

Whether or not they will be achieved and who will be the primary beneficiaries remains to be seen.

Although much of the research is theoretical and realisation of the potential is dependent upon successful competitive strategies being adopted by Community industry, the "Costs of Non-Europe" and, consequently, the gains to be realised by achieving a genuine internal market within Europe are substantial. These costs and gains are not evenly spread over all sectors of Community industry or indeed across the Member States. What is certain is that there will be enhanced competition and pace of change as more and more of Community industry and EFTA and Non-European companies hasten to take advantage of the changing face of Europe.

2025865372

CHAPTER 4

4. HOW THE INTERNAL MARKET IS TO BE ACHIEVED

4.1 THE INSTITUTIONAL AND LEGAL FRAMEWORK

This Chapter describes briefly the role of the Community institutions in the 1992 programme. It sets out the decision making and legal framework. It will be of interest to those who may seek to influence the content of proposals within the programme. The position is described more fully in the Annex.

4.1.1 *The institutions*

The four Community institutions primarily involved in the 1992 programme are the Commission, the Council, the Parliament and the European Court of Justice. The Commission proposes, the Parliament advises and the Council decides. These three institutions are subject to the supervision of the Court of Justice.

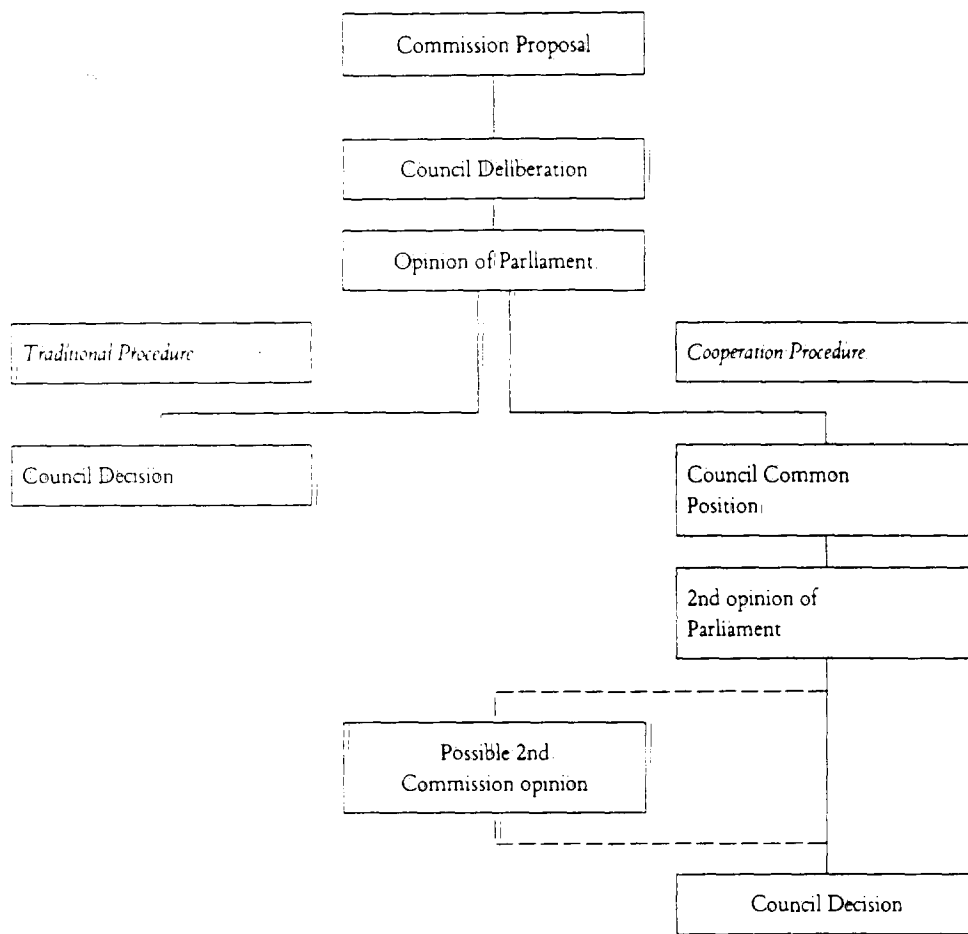
4.1.2 *The EC law-making process*

The first stage in the Community's legislative process is the drafting of a proposal by the Commission. The Commission has so far sent to the Council over 200 of the proposed directives listed in the White Paper. Approximately 70 more directives are at the drafting stage.

The Commission's proposal is forwarded to the Council. The Council is the primary law-making body in the Community. The Council will deliberate on the Commission's proposal and is empowered to reject, amend or approve, as it so wishes. Where the Treaty provides for consultation with the Parliament, however, the Council must first obtain the Parliament's opinion on the proposed measure before it makes its final decision. Moreover, the Single European Act has introduced what is known as the "**cooperation procedure**" in respect of certain measures. Whenever the cooperation procedure applies, the Council may not adopt a final decision upon receipt of Parliament's opinion. Rather, it must adopt what is known as its **common position**. That common position is then referred back to the Parliament for a second reading. The Parliament may decide to approve, reject or amend the Council's common position. It will then refer its second opinion to the Council. Should the Parliament propose amendments to the Council's common position, then the Commission must also put forward its views on the common position and on the Parliament's proposed amendments. Only upon receipt of the Parliament's second opinion may the Council finally make its decision.

2025865373

The various stages involved in the Community's law-making process can be illustrated diagrammatically:



There are important rules concerning the various majorities required at the different stages in the law-making process and the relevant time limits within which decisions and opinions must be given. These are outlined in the Annex.

The European Court of Justice (ECJ) plays an important role in the Community's legislative process. The ECJ supervises the actions of the Commission, Council and Parliament. Should any of these institutions act outside their powers, any resulting legislation may be annulled on appeal to the ECJ. Further, the ECJ plays an important role in interpreting and developing legislation adopted by other Community institutions and in ensuring that they are properly implemented by the Member States.

2025865374

4.1.3 *The nature of Community law*

The primary sources of Community law are the provisions of the Treaty of Rome. These rules, however, are further expanded by secondary legislation. Such legislation takes the form of regulations, directives, decisions, recommendations and opinions. With the exception of recommendations and opinions, secondary legislation binds Member States. The bulk of the legislation required for the completion of the internal market takes the form of directives. Member States are given a time limit within which to make the necessary changes to their own laws to implement the directives. Failure to implement within a time limit may result in defaulting Member States being brought before the European Court of Justice for a declaration that they are in breach of their Treaty obligations. Action will normally be brought by the Commission but may also be initiated by another Member State.

4.2 THE TIMETABLE FOR 1992

4.2.1 *1992 – What the date really means*

It should be stressed that “1992” means 31st December 1992. Furthermore, 1992 should not be seen as a fixed date by which the internal market will or will not be achieved depending upon whether the Community institutions and the Member States are successful in their objectives. Rather, it is a dynamic process which has already started and will continue beyond 1992. A number of measures have already been adopted and a larger number remain to be agreed.

4.2.2 *Possible delays and deadlocks in the decision making process*

None of the Community institutions is under formal time constraints in the early stages of the decision making process. The dates set out in the White Paper are targets. The Commission may make a proposal when it feels fit, Parliament is under no obligation to give its opinion by a certain time, nor is the Council under any such obligation in respect of its common position. The Parliament may deliberately postpone the delivery of its opinion as a delaying tactic to force the Commission to make concessions. With the increased role given to the Parliament the decision making process has become even longer and more cumbersome. At least one proposal has already lapsed altogether during the process of adoption. Against that, there are now many measures where the Council may ultimately make its decision by a qualified majority rather than by unanimous vote.

4.2.3 *Further possible obstacles to the attainment of the programme by 1992*

Most measures adopted under the White Paper are directives. This means that they must still be incorporated into the law of each Member State before they come into force. In many cases, therefore, even if a directive is adopted before the end of 1992, it will not come into force for some months or years after that date. Some Member States, and particularly those who have joined more recently, may be granted extra time within which to comply with certain measures.

Member States may fail to implement directives within the given time limits. Alternatively, they may keep to the schedule but may fail to interpret a directive correctly, perhaps by adopting a narrow construction contrary to the spirit, and sometimes to the letter, of the directive. In these cases it may be necessary for the Commission to bring Member States before the ECJ. Such cases, however, will take between one and two years before the Court finally gives judgment. Failure to implement Community legislation may thus considerably delay the achievement of the internal market.

4.3.4 *Progress to date*

The Commission issues progress reports every year. The third progress report was issued in March 1988 and a fourth in November 1988 for the meeting of the Council at Rhodes in December. Following withdrawals of some proposals and introduction of new ones the Commission's current programme consists of 279 proposals. Of these, 208 have been presented by the Commission to the Council and 94 have been adopted by the Council, including 6 which have been partially adopted. By the end of 1988 the Commission expects to have tabled 90% of the proposals.

The implementation of the programme is behind schedule. However, the speed at which decisions have been adopted increased considerably in the course of 1988.

2025865376